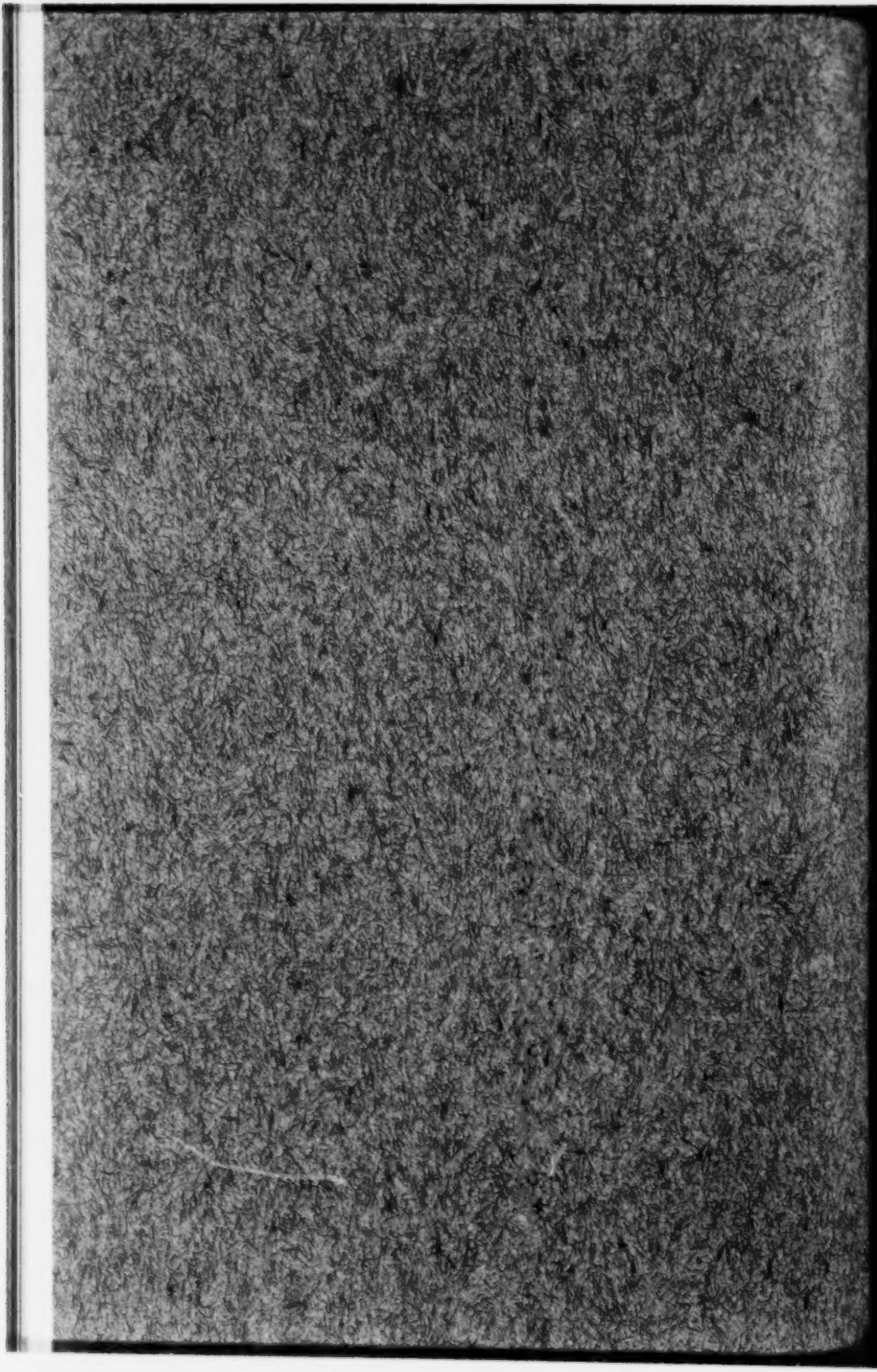

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1034

MILTON M. KRAMER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On December 13, 1943, petitioners were separately indicted in the District Court for the Northern District of Ohio in one count charging that each of them, having been classified as a conscientious objector to combatant and noncombatant military service and having reported to a Civilian Public Services Camp, wilfully failed to remain at the camp, in violation of Section 11 of the Selective Training and Service Act of 1940 (Kramer, R. 2–3; Nelson, R. 15–16; Magraw, R. 21–23; Tesdell, R. 28–30; Guinn, R. 35–37; Bristah, R. 42–44). Pursuant to stipulation (see R. 4), all six petitioners were tried jointly. The jury

found each of them guilty (R. 6, 18, 25, 32, 39, 46), and they were each sentenced to imprisonment for a term of five years (R. 6–7, 19, 25–26, 32–33, 39–40, 46–47).[1] Upon appeal to the Circuit Court of Appeals for the Sixth Circuit, the judgments were affirmed (R. 58, 59–66).

The evidence adduced at the trial is summarized in the bill of exceptions (R. 51–53) as follows:

> The District Attorney produced four witnesses, Mr. Edward Peacock, Director of C. P. S. Camp No. 23 at Coshocton, Ohio; Jack Hubbard, acting Assistant Director of C. P. S. Camp 23; Mr. Arthur Sanford, Superintendent at the Coshocton camp in charge of soil conservation; Mr. H. P. Garrett, Assistant Forester with the United States Department of Agriculture, who testified that the defendants were Conscientious Objectors so classified by their draft boards and regularly assigned to C. P. S. Camp at Coshocton, Ohio, and later transferred to a side camp at Sherrodsville, Ohio, where they worked at tree planting and soil conservation for several months; that defendants left camp without permission. The Government witnesses

[1] These sentences are subject to the special parole provisions contained in Section 10 (a) (6) of the Selective Training and Service Act (50 U. S. C. App. 310 (a) (6)) and Executive Order 8641 (6 Fed. Reg. 563), pursuant to which the Attorney General is authorized to grant parole to any person convicted for violation of the act, either to the armed forces or to a Civilian Public Service Camp.

testified that the actual work performed in the camp was in charge of a civilian.

For the defense Milton Kramer testified that he was a graduate of the City College of New York; that he had worked for the Student Peace Service of the American Friends Service Committee after leaving college, and that he was with the Workers Defense League until his assignment to C. P. S. He stated he left camp because C. P. S. was a part of the Conscription Law made by a warring state to carry out war, and that therefore he could not comply with it. He stated that the work required of him in Camp was forced labor; that he was not paid for what he was required to do; and that men were forced into these camps regardless of their ability to serve society in their regular vocations. He said these camps were contrary to his specific belief. He said that he knew that his leaving camp was contrary to the Selective Service Act.

Defendant Wallace Floyd Nelson testified that he was a student at Ohio Wesleyan University and Director of a Community Center; that at Camp he worked at soil conservation, then as a cottage master at the Cheltenham School for boys, and later was at the C. P. A. side camp at Sherrodsville. He said his reason for leaving Camp was that the camp was a part of conscription; that it was forced labor without pay; that the camp life was isolation from so-

ciety; was contrary to his religious belief and was a part of totalitarianism, which was replacing Democracy in a nation at war. He said he was sent to camp supposedly under civilian direction but actually the camp was under regulations handed down by military authority.

Defendant John Elliott Magraw testified that he was a graduate of the University of Minnesota; that he had worked under Civil Service, had attended Graduate School where he received a Master's Degree in Public Administration, had acted as Assistant Personnel Officer under the Minnesota Division of Social Welfare. His reason for leaving Camp was the misuse of training and ability of men, the effects of conscription and war on individual men in the armed forces and the men in the C. P. S. camps who became mentally unfit because of the system they were forced into, and by reason of the military control of the camp. He testified that Colonel Kosh inspected the camp in military uniform; that General Hershey was on active military duty; so was Colonel Kosh, and that both were administrative officers for C. P. S. camps. He said that the camp was under military, not civil control.

Defendant Loren Tesdell testified that he was a graduate of the Iowa State University, and that he was doing graduate work in Social Sciences at Western Reserve University when he was assigned to a C. P. S.

camp. He said he left camp by reason of its being a part of the war effort and of conscription; that engaging in such effort was in violation of his religious and ethical principles. He said that the only way that he could express this belief was in leaving camp.

Defendant Joseph Guinn testified that at the time of assignment to C. P. S. he was in the Y. M. C. A. College in Chicago. His reasons for leaving camp were that the camp was a part of conscription and of war, and that he became a part of conscription under the War effort by remaining in camp; that this war effort was contrary to his religious beliefs; that the C. P. S. Camp restricted his religious freedom; that he was forced to work without pay.

Defendant James Bristah testified that he was a graduate of Albion College and had done work with the Quakers in the Tennessee mountains; that in C. P. S. Camp he worked as a cook and planted trees. He said that the regulations governing camp were sent out under signatures of military officers.[2]

In their petition for a writ of certiorari, petitioners principally urge (Pet. 3–4, 5–9, 12–17) that

[2] The petition for a writ of certiorari states (p. 3) that petitioners left camp after they were denied leave over a week-end to attend a social workers conference, but this reason for leaving camp has no support in the summary of the evidence contained in the bill of exceptions.

the Civilian Public Service Camp system violates the Fifth and Thirteenth Amendments; that it is unauthorized by Congress; that it is predicated upon an unlawful delegation of legislative power; and that the camps are not under civilian direction, as required by Section 5 (g) of the Selective Training and Service Act of 1940. The same arguments were urged upon this Court in *Gormly* v. *United States* No. 220, October Term, 1943, certiorari denied, 320 U. S. 753, and *Roodenko* v. *United States,* No. 947, this Term, certiorari denied, March 26, 1945. In our briefs in opposition in those cases we set forth the considerations which in our view demonstrate the unsoundness of petitioners' contentions. The Court is respectfully referred to those briefs.

Petitioners additionally urge (Pet. 9–10) as a defense that they received no compensation for their services; that they were not accorded workmen's compensation benefits; and that no provision is made for allowances for their dependents.

The gist of petitioners' argument is that they are constitutionally entitled to the same pay, dependency allowances, and compensation for injuries resulting from their work, as is received by members of the armed forces. In our view, whether conscientious objectors shall be accorded the various benefits granted to military personnel is a question of legislative policy which rests with Congress. Unless Congress prescribes otherwise,

conscientious objectors have no claim to such benefits. The Constitution does not require Congress, in providing benefits for persons serving in the armed forces, to extend similar benefits to conscientious objectors who decline military service.

Insofar as dependency allowances and workmen's compensation benefits are concerned, these matters have been brought to the attention of Congress. The Director of Selective Service has supported the enactment of legislation for the benefit of conscientious objectors in these respects. See, e. g., Hearing on S. 315 and S. 675 before the Senate Committee on Military Affairs, 78th Cong., 1st sess., p. 18; Hearing on S. 2467 and S. 2510 before the Senate Committee on Military Affairs, 77th Cong., 2nd sess., p. 115; Hearing on S. 2708 before a subcommittee of the Senate Committee on Military Affairs, 77th Cong., 2nd sess., pp. 1–15. However, Congress has not enacted such legislation.

In respect of compensation for services performed by conscientious objectors, Congress has provided in successive appropriation acts that "such amounts as may be necessary shall be available for the planning, directing, and operation of a program of work of national importance under civilian direction, either independently or in cooperation with governmental or nongovernmental agencies, and the assignment and delivery

thereto of individuals found to be conscientiously opposed to participation in work of the land or naval forces, which cooperation with other agencies may include the furnishing of funds to and acceptance of money, services, or other forms of assistance from such nongovernmental agencies for the more effectual accomplishment of the work; and including also the pay and allowances of such individuals at rates not in excess of those paid to persons inducted into the Army under the Selective Service System, and such privileges as are accorded such inductees: * * *." See, e. g., Pub. Law No. 28, 77th Cong., 1st sess., 55 Stat. 92, 116–117; Pub. Lab No. 630, 77th Cong., 2nd sess., 56 Stat. 392, 416; Pub. Law No. 135, 78th Cong., 1st sess., 57 Stat. 494, 518–519. Congress has not, however, enacted legislation prescribing salary scales for conscientious objectors or requiring that salaries be paid. Accordingly, the Selective Service System has undertaken to provide food, clothing, and medical care and hospitalization for persons assigned to Civilian Public Service Camps (see Selective Service Regulations 691.11–691.13 and 692.11–692.13, 9 Fed. Ref. 4861–4863),[3] but they are not paid salaries.

[3] In camps operated by the National Service Board for Religious Objectors the expenses for these items are borne by that organization; in camps directly operated by the Government these expenses are paid by the Selective Service System. See Selective Service Regulation 653.3 (7 Fed. Reg. 248; 9 Fed. Reg. 6207).

In testifying before the Military Affairs Committee of the Senate (Hearings on S. 315 and S. 675, 78th Cong., 1st sess., pp. 17, 20), the Director of Selective Service made the following statement:

> General HERSHEY. The fact is that [conscientious objectors are] not paid. At the present time the law permits payment, we believe. However, we do not think they would accept it. It is our opinion that the great mass of conscientious objectors believe that it is not good public relations to pay them anything. First of all, it sets up a criterion of a man being compelled to accept something, rather against his interests, to be a conscientious objector—in other words, he is denied any pay.
>
> * * * * *
>
> Senator WALLGREN. Do you feel that they should be paid?
>
> General HERSHEY. Definitely not.
>
> * * * * *
>
> The thing we have to consider is they have not received any pay so far, and I think I would be supported by 60 or 70 percent of these people, who consider that that is one of the contributions they are making to show that they are really conscientious objectors and conscientiously believe what they came to believe, and I know some that will not accept, under any circumstances, Government money. I do not believe any of the Mennonite Church

members, by and large, would accept any money.

In any event, we do not believe that these grounds can be made the basis of defense for willful desertion in violation of the Act.

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

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